

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IN RE: OPENAI, INC. COPYRIGHT	:	
INFRINGEMENT LITIGATION	:	
	:	
This Document Relates To:	:	No. 25-md-03143 (SHS) (OTW)
	:	
THE INTERCEPT MEDIA, INC., v.	:	
OPENAI, INC., et al.,	:	
Case No. 1:24-cv-01515-SHS-OTW	:	
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**OPENAI'S ANSWER TO PLAINTIFF THE INTERCEPT'S  
SECOND AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15, Defendants OpenAI, Inc., OpenAI GP, LLC, OpenAI, LLC, OpenAI OpCo LLC, OpenAI Global LLC, OAI Corporation, and OpenAI Holdings, LLC (collectively, “OpenAI”), by and through the undersigned counsel, submit the following answer to Plaintiff’s Second Amended Complaint filed at ECF No. 155.

OpenAI states that the headings and sub-headings throughout the Second Amended Complaint do not constitute well-pleaded allegations of fact and, therefore, require no response. To the extent a response is deemed required, OpenAI denies the allegations contained in the Second Amended Complaint’s headings and sub-headings.

OpenAI denies all allegations in the Second Amended Complaint that are not explicitly admitted and otherwise answers as follows:

1. OpenAI admits that the Second Amended Complaint purports to bring claims on behalf of an entity identified as The Intercept Media, Inc. against OpenAI through its attorneys Loevy & Loevy. OpenAI lacks knowledge or information sufficient to admit or deny the remaining allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

2. The allegations of this paragraph purport to assert the purposes of a Clause of the U.S. Constitution, to which no response is required. To the extent a response is deemed required, OpenAI denies those allegations, including because they are incomplete and lacking important context. *See, e.g., Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 526 (2023) (noting that copyright law “reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the

other arts”) (quoting *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975)).

OpenAI denies any remaining allegations of this paragraph.

3. The allegations of this paragraph purport to assert the purposes of a federal statute, to which no response is required. To the extent a response is deemed required, OpenAI admits that unlike copyright infringement claims, which Plaintiff does not bring, no copyright registration is required to assert a claim under 17 U.S.C. § 1202(b). OpenAI denies any remaining allegations of this paragraph.

4. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

5. OpenAI admits that OpenAI OpCo LLC offers a product named ChatGPT. To the extent the allegations of this paragraph are directed at dismissed party Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

6. Denied.

7. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. The footnote allegations state a legal conclusion relating to claims that have been dismissed and are subject to a motion to strike, and thus no response is required. OpenAI denies any remaining allegations of this paragraph.

### **RESPONSE TO PARTIES<sup>1</sup>**

8. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

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<sup>1</sup> OpenAI neither admits nor denies the contents of the various headings and sub-headings in the Second Amended Complaint, which are reproduced herein solely for convenience.

9. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

10. OpenAI admits that OpenAI OpCo LLC and OpenAI, LLC offers a product named ChatGPT. OpenAI denies any remaining allegations of this paragraph.

11. OpenAI admits that OpenAI, Inc.; OpenAI GP, LLC; OpenAI, LLC; OpenAI OpCo LLC; OpenAI Global LLC; OAI Corporation; and OpenAI Holdings, LLC are related entities. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations about dismissed party Microsoft Corporation, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

12. OpenAI admits that OpenAI, Inc. is a Delaware nonprofit corporation with a principal place of business in San Francisco, California. OpenAI denies any remaining allegations of this paragraph.

13. OpenAI admits that OpenAI OpCo LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI OpCo LLC is the sole member of OpenAI, LLC. OpenAI admits that OpenAI LP changed its name to OpenAI OpCo LLC. OpenAI denies any remaining allegations of this paragraph.

14. OpenAI admits that OpenAI GP, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI, Inc. is the single member of OpenAI GP, LLC. OpenAI admits that OpenAI GP, LLC is a manager of OpenAI Global, LLC. OpenAI denies any remaining allegations of this paragraph.

15. OpenAI admits that OpenAI, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI denies any remaining allegations of this paragraph.

16. OpenAI admits that OpenAI Global LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that Microsoft Corporation and OAI Corporation are members of OpenAI Global LLC. OpenAI denies any remaining allegations of this paragraph.

17. Denied.

18. OpenAI admits that OpenAI Holdings, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI, Inc. and Aestas, LLC are members of OpenAI Holdings, LLC. OpenAI denies any remaining allegations of this paragraph.

19. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations about dismissed party Microsoft Corporation, and on that basis denies them.

20. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required: denied.

21. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required: denied.

22. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required: denied.

23. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. If a response is deemed required, OpenAI responds that, to the extent the allegations of this paragraph purport to quote from a publicly available interview, the full text of the interview speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations.

24. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required, OpenAI admits that OpenAI OpCo LLC partners with Microsoft's Azure platform. OpenAI denies any remaining allegations of this paragraph.

#### **RESPONSE TO JURISDICTION AND VENUE**

25. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is deemed required, OpenAI admits that this action purports to arise under the copyright laws of the United States, 17 U.S.C. § 101 et seq., and that the Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). OpenAI denies any remaining allegations of this paragraph.

26. For the purposes of this action, OpenAI does not contest personal jurisdiction. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny

the allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

27. For the purposes of this action, OpenAI does not contest personal jurisdiction. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

28. For the purposes of this action, OpenAI does not contest venue at this time. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

29. For the purposes of this action, OpenAI does not contest venue at this time. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

30. For the purposes of this action, OpenAI does not contest venue at this time. OpenAI admits that it did not contest venue in *Authors Guild v. OpenAI Inc.*, 23-cv-08292. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no

response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

**RESPONSE TO PLAINTIFF'S COPYRIGHT-PROTECTED WORKS OF JOURNALISM**

31. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

32. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

33. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

**RESPONSE TO DEFENDANTS' INCLUSION OF PLAINTIFF'S WORKS IN THEIR TRAINING SETS AND REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION**

34. OpenAI admits that some of OpenAI OpCo LLC's products rely on technology that can be described as a "large language model." OpenAI admits that "large language model" can be abbreviated as "LLM." OpenAI admits that OpenAI OpCo LLC's GPT models are a type of "large language model" architecture. OpenAI admits that the models that power ChatGPT may recognize and process text inputs from a user and generate text outputs in response. OpenAI denies any remaining allegations of this paragraph.

35. OpenAI admits that OpenAI OpCo LLC trains its models using numerous sources, including select publicly available data. OpenAI denies any remaining allegations of this paragraph.

36. Denied.

37. OpenAI admits that OpenAI OpCo LLC trains its models using numerous sources, including select publicly available data. OpenAI lacks knowledge or information sufficient to



admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

38. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

39. Denied.

40. To the extent the allegations of this paragraph purport to quote from or reference portions of a publicly available research paper, the full text of that paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. To the extent the allegations of this paragraph are directed at Reddit, OpenAI lacks knowledge or information sufficient to admit or deny those allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

41. To the extent the allegations of this paragraph purport to quote from or reference a publicly available webpage, the full text of that webpage speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with the full text available at that link, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

42. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed.

To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

43. To the extent the allegations of this paragraph purport to quote from or reference information publicly available on GitHub, the full text available at that link speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with the full text available at that link, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI lacks knowledge or information sufficient to admit or deny any remaining allegations of this paragraph, and on that basis denies them.

44. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

45. To the extent the allegations of this paragraph purport to quote from or reference portions of a publicly available research paper, the full text of that paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

46. To the extent the allegations of this paragraph purport to quote from or reference portions of a publicly available webpage, the full text of that webpage speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at the creators of the Dragnet content

extractor, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

47. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at the creators of the Newspaper content extractor, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

48. Denied.

49. Denied.

50. Denied.

51. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

52. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

53. Denied.

54. Denied.

55. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at Common Crawl, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

56. To the extent the allegations of this paragraph purport to quote from or reference a publicly available research paper, the full text of that paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

57. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at Google or the Allen Institute for AI, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

58. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

59. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

60. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

61. Denied.

**RESPONSE TO DEFENDANTS' REGURGITATION, MIMICKING, AND  
ABRIDGEMENT OF COPYRIGHT-PROTECTED WORKS OF JOURNALISM**

62. OpenAI admits that ChatGPT may recognize and process text inputs from a user and generate text outputs in response. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

63. Denied.

64. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

65. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

66. OpenAI admits that memorization is a rare failure of the learning process that OpenAI OpCo LLC is continually striving to eliminate. OpenAI further admits that OpenAI OpCo LLC has measures in place to limit inadvertent memorization and prevent regurgitation in model output. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

67. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

68. Denied.

69. Denied.

70. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

71. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

72. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response to the allegations of this paragraph is required, OpenAI lacks

knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

73. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

74. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about the actions of third parties, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

75. Denied.

76. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

**RESPONSE TO DEFENDANTS' INTENTIONAL REMOVAL OF COPYRIGHT  
MANAGEMENT INFORMATION FROM PLAINTIFF'S WORKS  
IN THEIR TRAINING SETS**

77. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

78. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny

the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

79. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

80. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph and on that basis denies them.

81. Denied.

**RESPONSE TO DEFENDANTS' COLLABORATION IN INFRINGING PLAINTIFF'S  
COPYRIGHT, UNLAWFULLY REMOVING COPYRIGHT MANAGEMENT  
INFORMATION, AND UNLAWFULLY DISTRIBUTING PLAINTIFF'S WORKS WITH  
COPYRIGHT MANAGEMENT INFORMATION REMOVED**

82. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

83. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

84. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

85. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

**RESPONSE TO DEFENDANTS' ACTUAL AND CONSTRUCTIVE KNOWLEDGE OF  
THEIR VIOLATIONS**

86. Denied.

87. Denied.

88. To the extent the allegations of this paragraph purport to quote from or reference portions of a publicly available article, the full text of that article speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

89. Denied.

90. Denied.

91. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit



or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

92. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

93. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

94. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

95. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

96. OpenAI admits that the OpenAI Service Terms are available at <https://openai.com/policies/service-terms/>, and that the text "disabled, ignored, or did not use any relevant citation, filtering or safety features or restrictions provided by OpenAI" appears at that

location. To the extent the allegations of this paragraph purport to quote from or reference portions of the Service Terms, the full text of the Service Terms speaks for itself. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

97. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

98. Denied.

#### **RESPONSE TO DEFENDANTS' CONTINUING VIOLATIONS**

99. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

100. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

101. To the extent the allegations of this paragraph purport to quote from or reference a publicly available webpage, the full text of that webpage speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. OpenAI denies any remaining allegations of this paragraph.

102. Denied.

103. To the extent the allegations of this paragraph purport to quote from or reference portions of a publicly available article, the full text of that article speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

104. Denied.

**Count I – Violation of 17 U.S.C. § 1202(b)(1) by OpenAI Defendants**

105. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–104.

106. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

107. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

108. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

109. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

110. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

111. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

112. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

113. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

114. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

115. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

**Count II – Violation of 17 U.S.C. § 1202(b)(3) by OpenAI Defendants**

[In its February 20, 2025 Order, the Court dismissed Count II with prejudice and thus, Count II and its associated allegations should be disregarded. *See* ECF No. 127 at 1.]

116. This paragraph relates to a claim that has been dismissed, and incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–115.

117. This paragraph relates to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

**Count III – Violation of 17 U.S.C. § 1202(b)(1) by Defendant Microsoft**

[In its February 20, 2025 Order, the Court dismissed Count III with prejudice. Thus, Count III and its associated allegations should be disregarded. *See* ECF No. 127 at 1.]

118. This paragraph relates to a claim that has been dismissed, and incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–117.

119. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

120. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

121. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

122. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

123. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

124. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

125. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

126. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

127. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

**Count IV – Violation of 17 U.S.C. § 1202(b)(3) by Defendant Microsoft**

[In its February 20, 2025 Order, the Court dismissed Count IV with prejudice. Thus, Count IV and its associated allegations should be disregarded. *See* ECF No. 127 at 1.]

128. This paragraph relates to a party and claim that have been dismissed, and incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–127.

129. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

### **PRAYER FOR RELIEF**

In response to the prayer for relief, OpenAI denies that Plaintiff is entitled to the requested relief, or to any relief whatsoever, including because Plaintiff has suffered no injury sufficient to confer standing to bring any claim for relief.

### **JURY DEMAND**

With respect to the jury demand contained in the Second Amended Complaint, OpenAI states that no response is required. To the extent a response is deemed required, OpenAI denies that Plaintiff's claim is properly triable to a jury.

### **AFFIRMATIVE DEFENSES**

In further answer to the allegations made by Plaintiff in the Second Amended Complaint, OpenAI asserts the following affirmative defenses. OpenAI does not concede that it has the burden of proof on the defenses listed below.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claim fails in whole or in part because the acts alleged in the Second Amended Complaint are not an infringement of copyright, the complained-of use was validly licensed by express or implied license, otherwise authorized by the copyright owner, or authorized by the law, including because the alleged acts are fair use and/or de minimis, and/or because copyright protection is barred by the doctrine of merger, the doctrine of scène à faire, or the idea/expression dichotomy.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred, in whole or in part, by one or more equitable doctrines, such as unclean hands, estoppel, waiver, abandonment, forfeiture, or laches.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred, in whole or in part, by the applicable statute of limitations.



**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery of damages because of and to the extent of its failure to mitigate its alleged damages (to which, in any event, it is not entitled).

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim fails, in whole or in part, for failure to state a claim.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for damages is barred by the Eighth and Fourteenth Amendments to the U.S. Constitution.

**SEVENTH AFFIRMATIVE DEFENSE**

OpenAI reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, and any other defenses at law or in equity, that may now exist or in the future become available based on discovery and further factual investigation.

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